



FACT SHEET
Broadband Technology Opportunities Program
Subrecipients and Contractors

Overview

BTOP award recipients may work with subrecipients and contractors (also commonly referred to as vendors) for assistance throughout the course of the awarded projects. The roles of each entity in a Federal assistance award are characterized below:

- A subrecipient is involved in the substantive activities of the awarded project to accomplish BTOP purposes. Terms and conditions from the grant award flow down to the subrecipient.
- A contractor provides goods and services to benefit the grant recipient. A contractor does not seek to accomplish a public benefit; rather, it pursues its own commercial objectives.

Subrecipient and Contractor Determinations

The Office of Management and Budget (OMB) issued guidance in Section 210 of OMB Circular A-133 on determining whether a participant in a Federal assistance award may be characterized as a subrecipient or as a vendor.

Use the checklist below in determining whether grant payments expected to be made to a project participant constitute a Federal award or a payment for goods and services.

| Subrecipient | Contract |
|--|--|
| <p>Characteristics that indicate a Federal award received by a subrecipient are when the organization:</p> <ul style="list-style-type: none">■ Determines who is eligible to receive Federal financial assistance.■ Has its performance measured against whether the objectives of the Federal program are met.■ Has responsibility for programmatic decision making.■ Has responsibility for adherence to applicable Federal program compliance requirements.■ Uses the Federal funds to carry out a program of the organization as compared to providing goods or services for a program of the pass-through entity. | <p>Characteristics that indicate a payment for goods and services received by a vendor are when the organization being paid:</p> <ul style="list-style-type: none">■ Provides the goods and services within normal business operations.■ Provides similar goods or services to many different purchasers.■ Operates in a competitive environment.■ Provides goods or services that are ancillary to the operation of the Federal program.■ Is not subject to compliance requirements of the Federal program. |

Importance of Definitions

Confusion about the terms and using them interchangeably may lead to erroneous recipient oversight, procurement and reporting requirements, American Recovery and Reinvestment Act (ARRA) reports, and financial audits. **The OMB guidance advises that the substance of the relationship is more important than the form of the agreement** and it is not expected that all of the characteristics of each entity will be present in a given situation.

Each situation must be evaluated on a case-by-case basis. A recipient should exercise its judgment when making the determination of whether a particular entity is appropriately characterized as a subrecipient or a contractor and





should evaluate the activities the entity will be expected to perform on the project against the criteria enumerated above.

Roles of Subrecipients vs. Contractors

More information on the roles and activities of each entity is captured in the following table.

| Topic | Subrecipient | Contractor |
|--|--|---|
| ARRA Reporting | <ul style="list-style-type: none">■ Prime recipient may delegate ARRA reporting to the subrecipient. | <ul style="list-style-type: none">■ Prime recipient cannot delegate ARRA reporting to the vendor. |
| Central Contractor Registration (CCR) | <ul style="list-style-type: none">■ A first tier subrecipient (i.e., a recipient of a subaward directly from the prime award recipient) must maintain current registration in CCR at all times during which it has active Federal awards funded with ARRA funds. | <ul style="list-style-type: none">■ Does not need to register on CCR. |
| DUNS | <ul style="list-style-type: none">■ Each entity (except individuals) that receives ARRA funds directly or indirectly should have a DUNS number. | <ul style="list-style-type: none">■ Each entity (except individuals) that receives ARRA funds directly or indirectly should have a DUNS number. |

Frequently Asked Questions

[Are partners, including subrecipients and contractors, liable to fulfill the terms of the award to the same extent as the lead applicant?](#)

A project partner's responsibilities depend upon whether it is a subrecipient working to accomplish the public purpose authorized by the grant award, or a contractor simply providing goods or services in its own commercial interest to benefit the grant recipient. A subrecipient must comply with programmatic requirements, administrative requirements in 15 CFR Part 14 or Part 24 (as applicable), cost principles, audit requirements, Department of Commerce (DOC) Standard Terms and Conditions, and American Recovery and ARRA Award Terms, among other award conditions.

In implementing subawards involving public-private partnerships, recipients should be aware that the uniform administrative requirements and cost principles applicable to subrecipients are based on the subrecipient's own type of organization, i.e., non-profit, university, or commercial organization. As a result, the same uniform administrative requirements and cost principles may not apply to the prime recipient and the subrecipient.

[What requirements do BTOP award recipients need to follow when selecting subrecipients and contractors for its project?](#)

The recipient must follow the procurement standards outlined in the Uniform Administrative Requirements, 15 CFR § 14.40-48 or 15 CFR § 24.35-37 when selecting a subrecipient or contractor.

Among other requirements, recipients must maintain written procurement procedures and written codes of conduct governing the performance of employees engaged in the award and administration of contracts. DOC applies this requirement both to the selection of contractors and subrecipients. These standards are intended to prohibit employees, officers, and agents from participating in the selection, award, or administration of contracts supported by Federal funds if a conflict of interest would be involved. Violation of these procurement requirements could be a basis





for suspension or termination of an award, or other appropriate action. Because unresolved conflicts of interest have the potential to undermine the integrity of the financial assistance process, it is important that such conflicts be brought immediately to the attention of the Federal Program Officer (FPO) for resolution.

Prime recipients must select contractors and subrecipients in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor or subrecipient performance and eliminate unfair competitive advantage, contractors and subrecipients that develop or draft specifications, requirements, statements of work, invitations for bids, and/or requests for proposals are excluded from competing for such contracts and subawards. The recipient must perform a cost or price analysis in connection with its award of each contract.

A recipient may use sole source selection based on a noncompetitive proposal only when justified, for example, when the award of a contract is infeasible under any other method and: (A) the item is available only from a single source; (B) there is a public exigency or emergency that will not permit a delay resulting from competitive solicitation; (C) the awarding agency authorizes noncompetitive proposals; or (D) after solicitation of a number of sources, competition is determined inadequate. In the case of sole source selection, cost analysis of the proposal is required and the recipient may be required to submit the proposed procurement to the awarding agency for an advance review.

Additional Resources

For additional information and guidance on identifying, selecting, and working with subrecipients and contractors, please refer to the following resources:

- Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit and Commercial Organizations, 15 CFR Part 14, <http://oam.ocs.doc.gov/docs/GRANTS/15cfr14.pdf>.
- Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, 15 CFR Part 24, <http://oam.ocs.doc.gov/docs/GRANTS/15cfr24.pdf>.
- American Recovery and Reinvestment Act Award Terms: <http://oam.ocs.doc.gov/docs/ARRA%20DOC%20Award%20Terms%20Final%205-20-09PDF.doc.pdf>.
- Department of Commerce Standard Terms and Conditions: <http://oamweb.osc.doc.gov/docs/GRANTS/DOC%20STCsMAR08Rev.pdf>.
- Round 2 Notice of Funds Availability (NOFA): http://www.ntia.doc.gov/frnotices/2010/FR_BTOPNOFA_100115.pdf.
- OMB Circular A-133 sec. __.210: <http://www.whitehouse.gov/omb/rewrite/circulars/a133/a133.html>.

